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09/802,223	03/08/2001	Christopher Keith	125524	6685

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EXAMINER	
OYEBISI, OJO O	

ART UNIT	PAPER NUMBER
3695	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/802,223	KEITH, CHRISTOPHER	
	Examiner	Art Unit	
	OJO O. OYEBISI	3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/02/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 17-22, 37-39, and 41-42 rejected under 35 U.S.C. 102(e) as being anticipated by SAIAS et al (SAIAS hereinafter: Pub. No, 2003/0014379).

Re claim 17: SAIAS discloses a computer–implemented method of facilitating trading, comprising: automatically, at a market process, receiving a designation of anonymous from a first trading process, and automatically at the market process facilitating a trade between the first trading process and a second trading process by providing the second trading process with a rating for the first trading process, wherein the second trading process remains unaware of the identity of the first trading process and yet is able to obtain, from the market process, a rating for the first trading process, wherein the rating is descriptive of the first trading process as a trading party, and wherein the rating is based on a statistical analysis of the outcome of prior trades between the first and second trading processes using data related to both the buyer and the seller sides of the prior trades, wherein the first and second trading processes and the market process

are each software processes executing on a computer (see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317), and wherein one of the first and second trading processes is engaged in the trade as a buyer, and the other of the first and second trading processes is engaged in the trade as a seller (i.e., operates to automate the exchange of resources among entities pg 21 **paras** 0307-0308).

Re claim 18: SAIAS discloses a method of facilitating trading, comprising: automatically providing information to a preference updating process, and automatically deciding, at a software process executing on a computer, the software process being a first market participant whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference updating process(see pg 21, paragraph 0310--0311, also see pg 22, paragraph 0317-0318), the preference rating being descriptive of the second market participant as a trading party, wherein the information provided to the preference rating updating process is derived from analyzing the outcome of prior trades between the first and second market participants using data related to both the buyer and the seller sides of the prior trades, and wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants (i.e., automate the exchange of resources among entities pg 21 paras 0307-0308).

Re claim 37: Claim 37, though a system claim, recites similar limitations to claim 18 supra and thus rejected using the same art and rationale as in claim 18.

Re claims 19, 38: SAIAS further discloses a method as stated supra wherein the information comprises a rule for determining the preference rating of the second market participant (see pg 21, paragraph 0310-0311).

Re claims 20, 39: SAIAS further discloses a method as stated supra wherein the information comprises a rating (i.e., priority rating score) for the second market participants (see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claim 21: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a platform process (i.e., the AM 108, see pg 21, paragraph 0310).

Re claim 22: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a market process (i.e., automated market, see pg 21, paragraphs 0306-0311).

Re claim 41: SAIAS further discloses the computer-accessible medium wherein the data regarding the trade includes a trade price, and preference rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320).

Re claim 42: SAIAS further discloses the computer-accessible medium wherein the metric is a market price at a time (see pg 22, paragraph 0319).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 23, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable Defario (US PUB. No.: 20020004774), and further in view of Kane (U.S PAT: 6,317,728).

Re claim 1: Defario discloses a computer-implemented method of facilitating trading, comprising: under control of instructions executed by one or more computing devices of a computer system: automatically capturing data regarding a trade between two market participants that are each parties to the trade (see fig.1 elements 14 and 24, see fig.7, also see fig.15), wherein the trade results in an exchange of items between the market participants and wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller wherein the captured data includes data regarding the trade for both the buyer side and

the seller side of the trade (see the abstract and the summary of the invention), automatically determining from the captured data whether each of the market participants has gained money (i.e., a win) or lost money (i.e., a loss) from the trade in which they engaged (see the abstract and the summary of the invention). Defario fails to disclose automatically updating a preference rating for each of the market participant based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the two market participant is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants. Kane discloses automatically updating, a rating for each of the two market participants (i.e., a cumulative merit process) based on the determination of whether money was gained or lost from the trade (see col.8, lines 35-67, also see col. 15, lines 5-10), wherein the rating for each of the two market participant is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants. Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Defario and Kane to determine the strategies that offer the best profitability for the market participants.

Re claims 23, 43: Claims 23 and 43, though system claims, recite similar limitations to claim 1 supra and thus rejected using the same art and rationale as in claim 1.

5. **Claims 1-16, 24-36, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable Defario (US PUB. No.: 20020004774), in view of Kane (U.S PAT: 6,317,728), as applied to claim 1, 23 and 43 supra, further in view of SAIAS**

Re claims 2, 24, 44: Neither Defario nor Kane discloses the method as stated supra wherein the rating is associated with the two market participants according to a rating scheme that is independently specified by each of the two market participants. However, SAIAS discloses wherein the rating is associated with the two market participants according to a rating scheme that is independently specified by each of the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 3, 25, 45: Neither Defario nor Kane discloses the method wherein the rating is two-sided, each of the sides corresponding to how one of the two market participants rates the other of the two market participants.

However, SAIAS further discloses the method wherein the rating is two-sided, each of the sides corresponding to how one of the two market participants rates the other of the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 4, 26, 40: Neither Defario nor Kane discloses the method as stated supra wherein the rating is based on at least one threshold. However, SAIAS further discloses the method as stated supra wherein the rating is based on at least one threshold (i.e., price and quantity, see pg 22, paras 0318-0319). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did

separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 5, 27: Neither Defario nor Kane discloses the method wherein the at least one threshold is supplied by at least one of the market participants. However, SAIAS further discloses the method wherein the at least one threshold is supplied by at least one of the market participants (i.e., information and supplied by the participating entities, see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 6, 28: Neither Defario nor Kane discloses the method wherein the preference rating is also based on information supplied by at least one of the market participants. However, SAIAS further discloses the method wherein the preference rating is also based on information supplied by at least one of the market participants (i.e., information and preferences supplied by the participating entities, see page 21, paragraphs 0310-0311).

Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 7, 29: Neither Defario nor Kane discloses the method wherein the information comprises a rule for determining the preference rating during the automatic updating. However, SAIAS further discloses the method wherein the information comprises a rule for determining the preference rating during the automatic updating (see page 21, paragraphs 0310-0311). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 8,9 and 30-31: Neither Defario nor Kane discloses a method wherein the information comprises a rating for the other market participants. However, SAIAS discloses a method wherein the information comprises a rating for the other market participants (i.e., priority rating score, see pg 27, paragraph 0407 to pg 28 paragraph 0409). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include rating scheme as taught by SAIAS (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320) in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 10, 32, 46: Defario does not explicitly disclose discloses the method wherein the rating is used in determining whether to allow or prohibit a next trade between the market participants. However, Kane explicitly discloses the method wherein the rating is used in determining whether to allow or prohibit a next trade between the market participants. However, Kane discloses the method wherein the rating (i.e., cumulative merit quotient) is used in determining whether to allow or prohibit a next trade between the market participants (i.e., the system monitors the success rate and failure rate of each agent and uses the merit quotient to control the power the agent wields in subsequent voting). Thus, it would have been obvious to one of ordinary skill in

the art to combine the teachings of Defario and Kane to allow market participants to pick trading parties based on the parties' trading performance.

Re claims 11, 33, 47: Neither Defario nor Kane discloses wherein thee data regarding the trade includes a trade price and the rating is based on comparing the trade price with a metric. However, SAIAS further discloses the method wherein thee data regarding the trade includes a trade price and the rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of SAIAS in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 12, 34, 48: Neither Defario nor Kane discloses the method wherein the metric is a market price at a time. However, SAIAS further discloses the method wherein the metric is a market price at a time (see pg 22, paragraph 0319). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of SAIAS in the combination of Defario and Kane , since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and

one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claims 13, 35: Defario does disclose the method as stated supra wherein the automatically updating occurs after the trade (see the abstract and the summary of the invention)

Re claims 14, 36: Defario does disclose the method as stated supra wherein the automatically updating occurs at a predetermined time (see the abstract and the summary of the invention)

Re claim 15: Defario does disclose the method as stated supra wherein the automatically capturing and updating are performed by a market process (see the abstract and the summary of the invention)

Re claim 16: Defario does not explicitly disclose the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process. However, Kane discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process (see col. 13, lines 37-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Defario and Kane to provide for remote update of trading rules and settings.

Response to Arguments

5. Applicant's arguments filed on 12/02/09 have been fully considered but they are not persuasive. Again the the applicant argues in substance that neither Defarlo nor Kane discloses "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," and "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants." Contrary to the applicant's assertion, Defaro explicitly discloses "automatically determining from the captured data whether each of the two market participants has gained money or lost money from the trade in which they engaged," (i.e., certain data about the trader's performance 32 is captured during this simulation and recorded in a multidimensional database 34. **This trader performance data includes maximum and minimum P&L (profit and loss)**, maximum and minimum P&L times, P&L at the opening of the market, actual P&L, capital utilization and shares traded. After all analysis is finished, the data analysis system 10 takes the trade records and restructures the data into a standard multidimensional database 34. **This allows correlations of profit & loss, win ratio and a number of other measures to be made against any of the factors listed above**. As the system 10 builds a trade database 10 over time, a profile of trading behavior for each user will be created. **Users, i.e. individual traders or management of trading firms, will be able to see what factors are typically present when traders win and what factors have led to**

losing trades, see paras 0079-0080). The examiner asserts that a data analysis system, as taught by Defarlo, performs the calculation of market participant's winning and losing positions (see paras 0079), which is akin to a software process executing on a computer system claimed by the applicant. The examiner further contends that a secondary reference, Kane, further discloses the limitation "automatically updating a rating for each of the two market participants based on the determination of whether money was gained or lost from the trade, wherein the rating for each of the market participants is descriptive of the market participant as a trading party and is based on the outcome of trading between the two market participants." (i.e., the system monitors the success rate and the/or failure rate of each agents and grants each agent a cumulative merit quotient according to the cumulative rate of success and/or failure for the respective agent, see col.8 lines 35-50). Thus the cumulative merit quotient taught by kane is tantamount to the preference rating disclosed by the applicant.

The applicant further argues that the agents disclosed by Kane are not market participants. This argument is predicated on the notion that Kane's agents only advise a trader, or market participant, on one side of a trade whether to enter into a trade and what position to take in the trade, and that Kane's agents do not enter into trades. Contrary to the applicant's assertion, the examiner maintains that Kane's system is fully automated wherein buy and sell decisions are made by intelligent agents (see the abstract), thus to say Kane's agents are not market participants, but only advise a trader, or market participant is inaccurate. Kane discloses a trading system wherein decision agents are set up to make a buy or sell decision based on their respective

rules (co1.5, lines 5-15, also see co1.15 lines 5-20), each agent in Kane is a market participant. Thus, when an agent makes a buy decision, that agent is a buyer in the market, and when an agent makes a sell decision that agent is a seller in the market regardless of which side of the market the agents are on.

Lastly , the applicants argues in substance that SAIAS fails to show or suggest a a preference rating from a market process. Contrary to the applicant's assertion, the examiner asserts that SAIAS explicitly disclose an automated market, which operates to automate the exchange of resources among entities (i.e., first trading process that participates in a trade with a second trading process) - please see SAIAS pg 21 paras 0307-0311. SAIAS further teaches as follows: "In the preferred embodiment, the AM 108 receives trading preferences computed by the economic agents and an optimization engine within the AM 108 finds the trade which maximizes the preferences of the participating economic agents. Specifically, the AM 108 allows economic agents such as organizations and firms to anonymously submit terms of a favorable exchange. Upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers. All of the terms that need to be negotiated are specified privately in a manner that incorporates the flexibility and often non-comparable utilities of the organization. Further, none of the surface will be available for inspection or analysis by any other market participant, or any third party. Since the AM 108 has the ability to receive preferences from economic agents which privately specify the range over which they are flexible on various terms, the present invention allows the negotiation process to be automated without publicizing the internal state of the

participating economic agents." - see SAIAS pg 22, paras 0317. Clearly, SAIAS disclosure that "the AM 108 allows economic agents such as organizations and firms to anonymously submit terms of a favorable exchange, upon receipt of the trading preferences from the economic agents, the AM 108 reconciles compatible buyers and sellers", constitutes the applicants limitation in claim 17 "wherein the second trading process obtains a preference rating from a market process for the first trading process while being unaware of the identity of the first trading process." Further, contrary to the applicant's assertion that SAIAS terms are not directed to who is on the other side of the trade, the examiner asserts that SAIAS terms are directed to economic agents such as organizations and firms that engage in trade/exchange with one another. The applicant needs to understand that the party on the other side of the trade is either a buyer or a seller, and a party on one side of the trade is trading/exchanging with another party on the other side of the trade. So if this is true, SAIAS discloses economic agents that set preferences and based on these preferences the system reconcile compatible economic agents (i.e., buyers and sellers) - see SAIA above

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571)272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571)272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/OJO O OYEBISI/

Primary Examiner, Art Unit 3696